



04-22-04 2133# / #2

In the United States Patent and Trademark Office

Serial Number: 10/083,749

Appn. Filed: 2002 February 25

Applicant: Richard Jaworski

Appn. Title: System of testing the upstream cable modem channel

Examiner/GAU: Decady, Albert / 2133

Mailed: 2004 April 20, 2004

At: Roswell GA

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APR 27 2004

Petition to Make Special

Assistant Commissioner for Patents
Washington, District of Columbia 20231

Technology Center 2100

Sir:

Applicant hereby respectfully petitions that the above application be made special under MPEP Sec. 708.02 for the following reason; attached is a declaration in support thereof:

- | | | | | | |
|------|-------------------------------------|-------------------------------------|-------|--------------------------|--------------------------------|
| I. | <input type="checkbox"/> | Manufacturer Available* | VII. | <input type="checkbox"/> | Recombinant DNA is involved* |
| II. | <input checked="" type="checkbox"/> | Infringement Exists* | VIII. | <input type="checkbox"/> | Special Procedure* |
| III. | <input type="checkbox"/> | Applicant's Health is Poor | IX. | <input type="checkbox"/> | Superconductivity is Advanced |
| IV. | <input type="checkbox"/> | Applicant's Age is 65 or Greater X. | | <input type="checkbox"/> | Relates to HIV/AIDS or Cancer* |
| V | <input type="checkbox"/> | Environmental Quality Enhanced XI | | <input type="checkbox"/> | Counters Terrorism |
| VI | <input type="checkbox"/> | Energy Savings Will Result | | | |

*☒ Also attached, since reason I, II, VII, X or XI has been checked is the \$130 Petition Fee pursuant to Rules 102 and 17(i)

Very Respectfully

Applicant: Richard Jaworski

Attachments: Fee, supporting Declaration, Acterna DSAM 2500 product literature

C/O: Richard Jaworski

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Telephone: 770-552-1608

Certificate of Mailing

I certify that this correspondence will be deposited with the United States Postal Service as Express Mail with proper postage affixed in an envelope addressed to: Assistant Commissioner for Patents, Washington, DC 20231 on the date below:

Date: 2004 April 20

Richard Jaworski Applicant



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**Declaration in Support of Accompanying Petition to Make Special
Reason II – Infringement Exists**

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In support of the accompanying Petition to Make Special, applicant declares as follows:

1. I am the applicant of the above-identified patent application.
2. I allege that the above-identified patent application is being infringed upon by Acterna Corporation of Germantown MD, in their DSAM 2500 Digital Service Activation Meter and that this product has been introduced and sold with this technology since May 2003 and is currently being marketed and sold in the United States.
3. I declare that I have made a rigid comparison between the Acterna DSAM 2500 and the claims of this application and find that claim(s) from this application read on this device as follows:

Claim 1:

A method for determining the performance of a portion of a network, the method comprising:

- Transmitting a test packet from a tester onto a portion of the network;
- Receiving the packet at the CMTS;
- The CMTS discarding packets with errors;
- The CMTS returning packets that do not have errors to the tester;
- Not discarding packets in the tester with errors;
- and

Identifying the packet as a test packet.

Alleged infringement of Claim 1:

The Acterna DSAM 2500 contains a feature known as lost packet test referenced in their sales literature. The test screen in the attached literature clearly shows lost packets isolated to both the upstream and downstream paths. Since packets that contain errors on the downstream are discarded under standard IP protocol in a cable modem, which is the device used in the product, there would be no way to determine downstream lost packets without infringing on claim 1, by not discarding packets in the tester with errors. By definition a downstream lost packet is a packet with errors and the cable modem in the instrument would discard these packets prior to measurement, making the measurement impossible without infringing on claim 1.

4. I declare that I have a good knowledge of pertinent prior art in relation to this application and alleged infringement.
5. I further declare that all statement made herein of my own knowledge are true and that all statements made upon information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both, under section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application and any patent issuing therefrom.

Very respectfully,

Richard Jaworski
Richard Jaworski

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